

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSHUA KELLIER,

Plaintiff,

-against-

NAICA ANTHONY ACOSTA, DHS MRS.  
MONTAGNA; DHS MRS. HYLER; NAICA  
JULIUS DOE; OFFICER CHEUNG DOE  
5TH PRECINCT; SKYWAY MEN'S  
SHELTER,

Defendants.

21-CV-3923 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, appearing *pro se*, brings this action, under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. The Court dismisses the complaint for the following reasons.

Plaintiff has previously submitted to this Court a substantially similar complaint regarding his experiences in the New York City homeless shelter system. That complaint names the same Defendants who are named in this complaint, in addition to other defendants not named here, and is presently pending before this Court under docket number 21-CV-3921. As this complaint raises the same claims, no useful purpose would be served by litigating this duplicate lawsuit. Therefore, this complaint is dismissed without prejudice to Plaintiff's pending case under docket number 21-CV-3921.<sup>1</sup> Plaintiff may assert his claims against these defendants in an amended complaint in the pending case, in compliance with Rule 15 of the Federal Rules of Civil Procedure.

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<sup>1</sup> Plaintiff previously filed a complaint asserting similar claims. *See Kellier v. NAICA Acosta*, ECF 1:20-CV-1058, 10 (CM) (S.D.N.Y) (dismissing complaint, after granting Plaintiff leave to amend, for failure to state a claim on which relief may be granted).

## CONCLUSION

Plaintiff's complaint is dismissed without prejudice as duplicative.

The order directing Plaintiff to either pay the fees or submit an application for leave to proceed *in forma pauperis* vacated. (ECF 2.)

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: May 26, 2021  
New York, New York

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
Chief United States District Judge